(2000) 03 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 114 of 1993

State of Himachal Pradesh APPELLANT

Vs

R.K. Singha and Others RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 114, 62, 64
Penal Code, 1860 (IPC) — Section 120B, 409, 420
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2000) CriLJ 4102 : (2000) 3 ShimLC 11

Hon'ble Judges : Kamlesh Sharma, Acting C.J.;K.C. Sood, J

Bench : Division Bench

Advocate : Vivek Thakur, Asstt. Advocate General, for the Appellant; C.B. Singh and Ramakant Sharma and T.S. Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Chand Sood, J.—This appeal, by the State is directed against the judgment of learned Special Judge (II), Sirmour District at Nahan, acquitting accused-respondents, R. K. Singha, Lekhbir Singh and Harbinder Singh, hereinafter referred to as A-l, A-2 and A-3 respectively. Accused Al and A2 were tried for the offences punishable under Sections 409, 420 and 120-B of the Indian Penal Code and Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the ''Corruption Act.'' Accused A3 was tried for the offences punishable under Sections 420 and 120-B of the Indian Penal Code. All the three accused have been acquitted, by the learned Special Judge (II), Sirmour District at Nahan, for want of adequate evidence.

2. It may be pertinent to notice here that during the pendency of the appeal A3 died and appeal is so far A-3 is concerned stands abated.

3. Prosecution case in brief :

A1 was posted as Assistant Soil Conservation Officer, Paonta Sahib in the year 1990, A2 was Agriculture Inspector working under Al at the relevant time and A3 was proprietor of firm M/s. Public Iron Store at Yamuna Nagar in the District of Ambala. It appears that Government approved certain schemes for Community Irrigation and Soil Conservation, in Nahan Block for villages Jamly, Jarja, Khairwala and Burma Papri. For this purpose, about 1400 metres of G.I. Pipes and 1895 K.Gs. of G.I. wire was to be purchased. Al was directed by the authorities to purchase these items. On 26-3-1980 Al and A2 went to Yamuna Nagar for this purpose. They obtained quotations from various firms and inspected the quality of the items to be purchased. A Bill No. 2848 dated 26-3-1980 (Ext. P.W. 1/B) amounting to Rs. 21126.81 paise, Bill No. 2849 (Ext. P.W. 1/C), amounting to Rs. 19474.00, Bill No. 2852 (Ext. P.W. 1/D) amounting to Rs. 3681.60 paise, Bill No. 2853 (Ext. P.W. 1 /E) amounting to Rs. 2652.00 and Bill No. 2854 (Ext. P.W. 1/F) amounting to Rs. 5491.20 paise all dated 27-3-1980 were obtained by A2 in respect of the material purchased for the Schemes. The payment of all these bills amounting to Rs. 52425.61 paise was made by two Bank Drafts, one dated 28-3-1980 in the amount of Rs. 40600.80 paise and the other also of the even date in the amount of Rs. 11824.80 paise to M/s. Public Iron Store, Yamuna Nagar. It is further case of the prosecution that Sh. Jitender Kumar Verma, Agriculture Inspector (P.W. 13), who was looking after these Schemes, was summoned by A-1 and asked to make necessary entries in respect of the goods of these bills in the Stock Register. P.W. 13 accordingly made entries regarding the receipt of the goods in the Stock Register. He also scribed a note on the Stock Register that these were the only advance entries and material, in respect of these bills, has not been received. He also made entry to similar effect on the reverse of the each bill. The bank drafts were sent to the firm on 29-3-1980. A GR No. 534 from regular Goods Transport Company, Yamuna Nagar was obtained by A2 showing that these goods were carried under this particular G.R. A-2 also received Rs. 534/- being freight charges of the goods under G.R. No. 534. On investigation, it was found that material worth Rs. 12988/- was only received against the material of Rs. 52425.61 paise. The remaining amount of Rs. 39437.61 paise, according to the prosecution, was misappropriated by the accused persons in pursuance to the conspiracy. It is in this background that the accused have been prosecuted.

4. Learned trial Judge, as noticed earlier, acquitted all the accused for want of adequate evidence.

5. We have heard learned Assistant Advocate General, for the appellant and learned counsel for the respondents. We have also gone through the record.

6. It is admitted position that A-1 and A-2 were public servants at the relevant time. Sub-section (2) of Section 13 of the Corruption Act is a punitive provision and provide(s) for the punishment to any public servant who commits criminal misconduct. Section 13(1)(c) of the Corruption Act and Section 409 of the Indian Penal Code may be reproduced for convenience :

13. Criminal misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain from himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him. or under his control as a public servant or allows any other person so to do; or

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Section 409. I.P.C.

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

It may be seen that in both the cases, in the present case, the prosecution is obliged to prove :

(a) the accused was a public servant;

(b) He was entrusted with property or any domain over it or control over it, as such public servant;

(c) Committed criminal breach of trust in respect of the same or misappropriated the same or otherwise converted that property for his own use.

7. In the present case, there is no scope for dispute and it is admitted position, that both A-1 and A-2 were public servant(s) at the relevant time. It is also not in dispute that A-1 had control or domain over the funds which were to be utilised for the purchase of the material for the purpose of the Schemes, inasmuch as, he was the person who was authorised to make payments in respect of the material purchased under the bills referred to above from the funds placed at his disposal by the Government. In case of criminal misappropriation, prosecution is obliged to prove that accused not only received the money or had domain over the money subject matter of misappropriation, but also such amount has been misappropriated. In other words, accused did not apply or spend the money for the purpose for which it was placed at their disposal.

8. In the present case, it is not disputed that A-1 in his capacity as Assistant Soil Conservation Officer was required to purchase the material for the Schemes and pass payment (s) for such purchase. There is also no dispute that bills for the purchase of material worth Rs. 52425.61 paise were obtained from A-3. Now the case of the prosecution is that A-1 conspired with A-2 and A-3 to defraud the Government. In pursuance of this conspiracy A-1 forced Jitender Kumar verma {P.W. 13} to make entry in the relevant documents showing the receipt of the entire material. A-1 passed the bills and made payment of entire amount of Rs. 52425.61 paise to the firm of A-3 without receipt of the material subject of the bills: and thus misappropriated Rs. 39437.61 paise.

9. In order to secure conviction, prosecution was obliged to prove that material worth Rs. 39437.61 was not in fact received and A-1 along with A-2 and A-3 was responsible for such non-receipt of the material and instrumental in falsification of the record. It is not in dispute that the bills for payment were routed through different channels including the concerned accountant, concerned clerk, A-2 and Jitender Kumar Verma (P.W. 13). A-1 R. K. Singha in his statement u/s 313, Cr. P.C. explains that the material was received by Jitender Kumar Verma (P.W. 13), Agriculture Inspector, Nahan Block, who acknowledged the receipt of the material complete in all respects vide entry made by him in the measurement book and endorsement to this effect on the original and duplicate bills. He further explains that no payment was made without receipt of the material.

10. We have perused the bills Exhibits P.W. 1/B to P.W. 1/F pertaining to the various items purchased for the purpose of the Schemes. The bills are in the name of Assistant Soil Conservation Officer, Paonta Sahib. There is endorsement of Jitender Kumar Verma (P.W. 13) in his own hand, certifying that the material mentioned in the bill(s) has been received and entered in Store Book and the Measurement Book. It further certifies that the material subject matter of the bill

is chargeable to the concerned Scheme(s). There is interpolation in the endorsement of the bills. Expression ''advance bill'' has been added later on in a different ink. The certificate regarding the entry of the material in the Store Book has also been interpolated and word ''advance'' has been added between the words ''bill'' and ''entered.'' Similarly, other interpolations have been made to show that the bills were advance bills and payments have been made in advance to the said firm. There is further interpolation to the effect "final entry will be made after supply of material." The bare persual of these bills will show that these interpolations were made at a later date. All these interpolations are admitted to be in the hands of Jitender Kumar Verma (P.W. 13), the then Agriculture Inspector, who was looking after the Schemes and was responsible to receive the material in question.

11. It is the evidence of Jitender Kumar Verma {P.W. 13) that in the year 1980 he was posted as Agriculture Inspector under SFDA Scheme at Nahan and was also looking after the work pertaining to Soil Conservation Scheme of Nahan Block under A-1 R. K. Singha, Assistant Soil Conservation Officer, Paonta Sahib. It is his evidence that he was handed over the concerned files and records of the Soil Conservation Schemes of Jogiban, Rukhri, Bankala and Community Irrigation Scheme of Jamta in the second week of March, 1980. Later on five more schemes, namely, Khairwala Kotwala and Brama Papri Soil Conservation Schemes and Jamli and Jarja Irrigation Schemes were handed over to him. It is his evidence that the payment in respect of the material purchased for these Schemes was made by A-1 R. K. Singha to the firm of A-3 through bank drafts which were sent through A-2 Lekhbir Singh. It is further evidence that no material in respect of the bills payment of which was made to the firm, was received and he made advance entry of the receipt of the material on the basis of the bills in the Store Register Ext. P.W. 5/A. The entries in respect of the material received are Ext. P.W. 13/A to Ext. P.W. 13/E in the Register Ext. P.W. 5/ A. It is his evidence that he at the instance of A-1 R. K. Singha took on loan 1985 Kgs of G.I. wires from SADP Store, Dhaulankuan and lifted the same from Pradhan Gian Chand (P.W. 7) on 25-3-1980 and made relevant entries in the Register. This lifting of 1895 KGs of G.I. wire on 25-3-1980 has no significance as the G.I. wires and G.I. pipes were not purchased till 28/29th March, 1980. He, however, admits that A-1 R. K. Singha was not with him at that time. It is his evidence that he wrote letters Ext. P.W. 3/P to Ext. P.W. 3/R to A-1 R. K. Singha regarding the non-receipt of the material. Perusal of letter Ext. P.W. 3/ P written by Jitender Kumar Verma (P.W. 13) on 27-3-1981 shows that he had made a grievance that he was not able to complete the Schemes for want of cement. He also discloses in this letter that he had not received G.I. Pipes 2" dia, measuring 964 meters, G.I. wires 1895 KGs and 3 nipples. A-1 on receipt of this letter promptly wrote to A-2 that Jitender Kumar Verma (P.W. 13) has informed that he had not received this material and he should visit M/s. Public Iron Store, Yamuna Nagar and find out the actual position of the material supplied to Jitender Kumar Verma (P.W. 13) as also the detail of the material which was not supplied to him

by the firm. He asked A-2 to submit his report immediately. To similar effect is the second letter, dated 13-31981, of Jitender Kumar Verma (P.W. 13), where also he states that he has not received 1895 KGs G.I. wires and 964 meters of G.I. pipes. A-1 wrote another letter, Ext. P.W. 3/S to the firm of A-3 requesting the firm to supply the balance material as intimated by Jitender Kumar Verma (P.W. 13) in his letters Ext. P.W. 3/P and Ext. P.W. 3/R. Now assuming the firm of A-3 had not supplied the entire material to Jitender Kumar Verma''(P.W. 13), notwithstanding the entries made by P.W. 13 regarding the receipt of the entire material. A-1 and A-2 by no stretch can be held to be responsible for the non-receipt of the material for two reasons :

(a) It was for P.W. 13 to receive the entire material and in case it was not. received by him, he should have brought it to the notice of the concerned authorities immediately. The payment of all these bills were sanctioned by A-1 after P.W. 13 (Jitender Kumar Verma) certified that the goods subject matter of the bills have been received by him and entered in the Store Register. It is significant that Jitender Kumar Verma (PW. 13) did not. complain about the non-receipt of the material for one year. It was on 27-3-1981, for the first time, after one year, that he complained by his letter Ext. P.W. 3/P that entire material has not been received by him. He does not explain in his testimony as to why he did not report the matter to the concerned authorities for one year.

(b) The moment Jitender Kumar Verma (P.W. 13) brought to the notice of A-1 that entire material has not been received by him, he immediately took up the matter with the firm of A-3 and also with A-2. The correspondence, on which prosecution relies, shows that he had taken up the matter with the firm in right earnestness in his various communications including Ext. P.W. 3/S and Ext. P.W. 3/T. Endorsement on the letter Ext. P.W. 3/T shows that Jitender Kumar Verma (P.W. 13) was directed to intimate whether he has lifted the balance material from the firm or not and submit his report. No such report exists on the record. Had A-1 been privy to any misappropriation, he would not have taken up the matter with the firm of A-3 in the manner he did.

12. A-1 in his statement u/s 313, Cr.P.C. explains that he is innocent and has falsely been implicated at the instance of Mr. P. K. Kocher, the then Deputy Director (Agriculture), who was prejudiced against him because of pending criminal case in respect of ginger scandle.

13. It is significant to note that Jitender Kumar Verma appearing as P.W. 13 states that he did not receive any material in respect of the bills for which payment was made to the firm of A-3. But in his letter Ext. P.W. 3/P, he states that he has not received 964 meters of 2" dia G.I. pipes and 1895 KGs G.I. wires and 3 nipples. Whereas the bills pertain to 1400 meters of steel tubes. Therefore, it cannot be said that the entire material was not received by him. It is to be noticed that this witness has made entries in the measurement book Ext. P.W. 1/X regarding receipt of the material in question. However, according to him sometimes entries in the measurement books are made on the basis of the

advance bills. This witness thus admits, though reluctantly having made wrong entries in the measurement books. When he was confronted with the interpolation of the words "advance bill entry" in Ext. P.W. 1/B to Ext. P.W. 1/F in different ink and style. He denies the fact. The bare perusal of the entries, as noticed earlier, shows that these words have been interpolated at a later date in different ink. To believe this witness is to believe incredible. He admits that the bills were passed on the basis of verification made by him in the bills. In other words, had he not verified these bills, the payments would not have been made to the firm by A-l. The fact is that Jitender Kumar Verma (P.W. 13) was earlier made accused. Later, for reasons not disclosed on record, he was made witness instead of accused. He admits in his cross-examination that it was his duty to execute works of various Schemes. He admits in his cross-examination that Gopinathan was the Surveyor of the Schemes and he stores 72 G.I. pipes at Jamli Scheme and 140 at Janta. In his own words, "it is correct that Gopinathan was the Surveyor. It is correct that Gopinathan had store 72 G.I. pipes at Jamli Scheme and 140 at Jamta...."Thus receipt of 212 G.I. pipes is admitted by him.

14. It is the case of the prosecution that entry made by P.W. 13 in the bills regarding the receipt of the material subject of those bills was only an advance entry. No rule or instruction of the Government has been brought to our notice, by the learned Assistant Advocate General, which requires storekeeper to make entry of the receipt of goods in advance or to make advance entry in the bills regarding the receipt of the material, subject of those bills, without actually receiving such material. In fact, such procedure is unknown to the established rules/ instructions. There is substance in the submissions of the learned counsel for the respondents that the entries were interpolated in the duplicate bills Ext. P.W. 1/B to Ext.- P.W. 1 /E and had such entries existed in the original bills, the same would have been produced in the Court to show that in fact advance entries were made by Jitender Kumar Verma (P.W. 13). It is admitted position that original bills after the payment by the treasury, were sent to the office of Accountant General, Himachal Pradesh. Now had there existed any endorsement on the bills being advance, the original bills would have been examined in the office of the Accountant General and produced in the Court to show that the bills when passed contained the endorsement that they were advance bills.

15. P.W. 19 Pritam Singh was posted as Clerk in the office of Assistant Soil Conservation Officer, Paonta Sahib at the relevant time. He produced the relevant documents to the police including the bills Ext. P.W. 1/B to Ext. P.W. 1/F. In cross-examination, he categorically states, that the words ''advance entries'' were not there on the backside of the bills when he had handed over them to the police and had verified them. It is the evidence of this witness :

the bills Ext. P.W. 1/B to Ext. P.W. 1/F are duplicate bills and their original have been sent to the office of the Accountant General, Shimla. The words ''advance entries'' written on the back of these bills were not there when I had verified them. The originals of these bills which were sent to Accountant General also did not contain these wordings when the same were sent there. It is incorrect to suggest that these words are in different handwriting. However, they are in different ink.

16. The evidence of this witness nails the lie of Jitender Kumar Verma (P.W. 13). The evidence of this witness shows that Jitender Kumar Verma (P.W. 13) interpolated the entries on the duplicate bills Ext. P.W. 1/B to Ext. P.W. 1/F showing the entry as advance entry. Jitender Kumar Verma (P.W. 13) was not a raw hand. As admitted by him he was employed in this department in January, 1962 and that in the discharge of his duties, he used to purchase all materials, keep it in stores and maintain record thereof. In his own words :

I am employed in this Department since 1-1-1962. It is correct that in the discharge of my official duty I have to handle the purchase of material, keep them in store and maintain the record thereof.

Now taking into consideration his experience of about 20 years in the department, his conduct of making interpolations in the record and his certificate(s) to the effect, on the reverse of the bills, that the material subject-matter of the bills have been received by him and entry made in the Store Book, are not in conformity with his innocence. To repeat, the payments were passed by A-1 only on the certificate of Jitender Kumar Verma (P.W. 13). He is not that innocent as he would have us believe.

17. This apart, as noticed earlier, Jitender Kumar Verma (P.W. 13) does not say a word in his evidence as to why he made advance entry not only on the reverse of the bills, which may be to facilitate the payment, but also in the store register.

18. Learned counsel for the respondents submit that duplicate bills Ext. P.W. 1/B to Ext. P.W. 1/F cannot be read in evidence against the respondents. True it is, Section 64 of the Indian Evidence Act mandates that all documents must be proved by primary evidence except where a party has been permitted to lead secondary evidence. Section 62 of the Indian Evidence Act defines primary evidence to mean the document itself produced for inspection of the Court. The entire case of the prosecution relies on the evidence of Jitender Kumar Verma (P.W. 13). His testimony being unworthy of any credence cannot be relied upon. There is no other evidence to link the accused with the commission of any offence.

19. The action of A-1 in passing payment of the bills Ext. P.W. 1/B to Ext. P.W. 1 / F on their presentation after their having been routed through various official channels including the Accountant with the certificate of the in-charge of the Schemes, namely, Jitender Kumar Verma (P.W. 13), that material, in respect of the bills has been received and entered in the store book, cannot be faulted with.

20. It is important to notice that letters written by A-1 to his Deputy Director regarding this transaction have not been produced on record. The legitimate presumption u/s 114(g) of the Indian Evidence Act can be drawn that had these

letters been produced, it would not have favoured the prosecution.

21. No other point is urged before us.

22. There is no force in the appeal.

23. In result, appeal fails and is dismissed. The bail bonds furnished by the respondents shall stand discharged.